IN THE SUPREME COURT OF FLORIDA

THE SCHOOL BOARD OF
ALACHUA COUNTY, FLORIDA, et al.,

Petitioners,

v.

FLORIDA DEPARTMENT OF
EDUCATION, et al.,

Respondents.

Case No. SC19-1649

L.T. Case No. 1D18-2072

ON REVIEW FROM THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

PETITIONERS' JURISDICTIONAL BRIEF

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EXPLANATION OF REFERENCES USED IN THIS BRIEF

References to "school boards" or "local school boards" are to all 67 district school boards across the state. Each of these school boards are responsible for the control, organization, and administration of public schools within their school districts. Each county constitutes a school district. When capitalized, "School Boards" refers to the nine district school boards that remain as plaintiffs/appellants/petitioners in this lawsuit, the School Boards of Alachua, Bay, Broward, Hamilton, Lee, Orange, Polk, St. Lucie, and Volusia Counties.

"FDOE" refers to the Florida Department of Education.

STATEMENT OF THE CASE AND FACTS

The Florida Constitution reserves to locally elected school boards the power to "operate, control and supervise" local schools. Art. IX § 4(a). Here, a statewide collection of School Boards challenge six provisions of HB 7069, a 2017 omnibus education bill.[1] (A 9-10). The challenged provisions of HB 7069 unconstitutionally transfer control over operational decisions from local school boards to unelected Florida state employees at FDOE. Moreover, HB 7069 creates a parallel system of public schools, not subject to school board control, in violation of the State's duty to create a "uniform . . . system of free public schools." Art. IX § 1(a).

Similar attempts to transfer control of local public schools from locally elected public officials to the State have been stricken as unconstitutional by this and other appellate courts. Misunderstanding and misapplying this precedent, the opinion below rejected the School Boards' substantively identical constitutional challenge. (A 18-23). Even worse, it ruled that the School Boards had no standing to press four of their constitutional claims, despite HB 7069's direct attack on their constitutional powers. (A 16-18). This Court should grant review.

The opinion below addressed the merits of two of the six constitutional challenges, and we start our discussion there.

Capital Millage Funds. Article VII, Section 9(a) of the Florida Constitution

[1] HB 7069 was published in chapter 2017-116 of the Laws of Florida.

authorizes school boards to levy ad valorem taxes up to 1.5 mills against taxable property value for capital expenses. (A 19-20). Before HB 7069, school boards determined how to spend those discretionary capital millage dollars, whether it be for new construction, modeling, repair, or acquisition of capital needs such as school buses or technology. HB 7069 eliminated this discretion. School boards must now distribute a portion of those discretionary dollars pursuant to a rigid formula and without regard to the actual needs of the district's schools. (A 20).

Title I Funds. Title I is the federal education funding program designed to support students from low-income families. (A 22). Before HB 7069, local school boards had the discretion to use Title I funds for district-wide educational initiatives to improve student achievement for low-income students. Such programs include summer school, extended instructional days, migrant education, extra math and science programs, and transportation services. (A 22).

Echoing its capital millage restrictions, HB 7069 eliminated this discretion by mandating certain spending on every local school. This amendment requires local school boards to discontinue many of their district-wide low-income programs that previously received the benefit of Title I funding. (A 22).

The opinion below recognized that the School Boards had standing to challenge these two restrictions on their fiscal decision-making because these restrictions impacted the expenditure of public funds. (A 18). But the court upheld

these restrictions, holding that the State's constitutional duty to make "adequate provision" for a "uniform" and "high quality" education, Art. IX § 1(a), trumped the School Boards' power to "operate, control and supervise" local education. (A 21-22). In other words, the opinion holds that, if the State does not like how school boards are spending local dollars, it can simply muscle the school boards out of the way and take over these local decisions. (A 21-22).

The remaining restrictions. The balance of the four restrictions likewise impact the School Boards' local supervisory powers. The "Local Educational Agency" restriction allows charter schools to compete with local school boards for federal dollars, dividing fiscal management and thus eliminating a local school board's ability to do a district-wide assessment of needs and priorities. (A 9). The "Standard Contract" restriction effectively cuts the school board out of the charter school approval process by removing the school board's discretion to negotiate the terms, conditions, and performance expectations applicable to the school. (A 9).

The "Schools of Hope" restriction completely cuts local school boards out of the process of approving new charter schools when those schools are near persistently low-performing traditional public schools. (A 9). Finally, the "turnaround provision" limits local school boards' ability to find solutions for persistently low performing schools. (A 10).

The First District never reached the merits of these four restrictions. Instead,

it held that the School Boards had no standing to challenge them, regardless of their impact on the School Boards' ability to control, operate, and supervise their local schools. In doing so, the court misapplied the public official standing doctrine, which holds that public officials have no standing to refuse to enforce a statute by challenging its constitutionality. But no case, until the opinion below, has applied this doctrine to prevent a constitutional officer from challenging a statute that takes away his or her powers, and thus prevents the performance of that officer's constitutional duties. Here, the School Boards wish to perform their constitutional duties but are being prevented from doing so by HB 7069.

In short, the First District rejected all six constitutional challenges, two on the merits, and four for lack of standing. The School Boards now seek this Court's discretionary review.

SUMMARY OF THE ARGUMENT

This Court has the power to take this case. The decision below affects a class of constitutional officers, construes the Florida Constitution, declares valid a state statute, and introduces express conflict into the law.

The case warrants this Court's review. On the merits, this case concerns the constitutional balance between the State's duty to provide for and supervise the system of public education and local school boards' constitutional duty to operate, control, and supervise local schools. The First District ignored this balance, giving

the State *carte blanche* to regulate what were previously considered local matters. The opinion is thus inconsistent with the plain language of the Constitution and in conflict with previous decisions of this Court and other Florida appellate courts. If the First District is correct in its analysis, the functions of local school boards can effectively be replaced by the FDOE, under the guise of "supervision."

To make matters worse, the First District relied on standing in refusing to address four of the School Boards' constitutional challenges. This determination was an erroneous and unwise expansion of the public official standing doctrine. No other case has held that a constitutional officer lacks standing to challenge a direct attack on his or her powers. The expansion of this doctrine has ramifications beyond the dispute in this case, affecting every public official whose constitutional powers are unconstitutionally curtailed. The conflict injected into the standing doctrine by the First District's recent precedent must be reviewed and corrected.

ARGUMENT

This Court has jurisdiction. The decision below affects every school board in the state—a class of state constitutional officers. *See, e.g.*, *Sch. Bd. of Palm Beach Cty. v. Survivors Charter Sch., Inc.*, 3 So. 3d 1220, 1223-24 (Fla. 2009). Moreover, the focus of the case, and nearly the entire opinion below, is the express construction of two provisions of the Florida Constitution (A 6-15, 18-26), creating jurisdiction under Article V, § 3(b)(3) of the Constitution. And that construction

leads to an express declaration that HB 7069 is constitutional (A 18-26), creating jurisdiction under Article V, § 3(b)(3). Finally, that construction conflicts, as discussed below, with previous decisions of this and other Florida appellate courts.

This Court should grant jurisdiction. The heart of this important dispute is the tension between two key constitutional provisions setting forth the relative powers of state administrators and local school boards. Determining the extent to which the State can intrude on local power has enormous practical consequences and impacts nearly every constitutional duty the school boards must perform. This case provides the perfect vehicle to examine just what it means for the State to provide for a uniform system of public education, while reserving to local school boards the right to "operate, control and supervise" the schools within their district.

As much as the State will try to downplay the importance of the challenged provisions of HB 7069, these challenges, at bottom, concern the protection of a fundamentally important value, local control over local schools by local representatives answerable to local voters. Recognizing the importance of this principle, previous decisions of Florida appellate courts have carefully preserved the power of local school boards. *E.g.*, *Bush v. Holmes*, 919 So. 2d 392, 398 (Fla. 2006) (state impermissibly established schools not approved and supervised by local school boards); *Duval Cty. Sch. Bd. v. State Bd. of Educ.*, 998 So. 2d 641, 644 (Fla. 1st DCA 2008) (state impermissibly set up state agency to authorize charter

schools without approval by local school boards). Granting review in this case is essential to determining that the line between state supervision of the system and local control is drawn consistently and correctly.

This Court's review is particularly important because the decision below draws this line between state and local power in a way that is sharply inconsistent with previous precedent, thus introducing conflict and confusion into previously settled law. The opinion embraces a hierarchy that allows the State, under the guise of "supervision," to make local operational decisions. (A 21-22). But supervision of the "system of education" means setting and enforcing statewide standards, not micromanaging local fiscal and operational decisions. The decision below cannot be squared with previous Florida decisions expressing the constitutionally enshrined principle of local control. *E.g.*, *Bd. of Public Instr. of Brevard Cty. v. State Treasurer*, 231 So. 2d 1, 4 (Fla. 1970) ("Subject to the power of the legislature to establish a Uniform system of free public schools the control of the free public schools in each district is vested in the local school board."); *School Bd. v. Hillsborough Cty. v. Tampa Sch. Dev. Corp*., 113 So. 3d 319, 324 (Fla. 2d DCA 2013) (local school boards must retain "the right to operate, control, and supervise the provision of educational services to the students").

The Capital Millage and Schools of Hope Provisions are illustrative of this transfer of power to the State. Before HB 7069, local school boards decided how

discretionary capital millage dollars should be spent, with local officials answerable to local voters setting priorities. HB 7069 removes this discretion by requiring those dollars to be divided among every district school pursuant to a rigid formula, regardless of need, and regardless of the needs of other district schools.

Employing its hierarchal view of the Constitution, the opinion below approves this usurpation of state control over local educational priorities. But if this view were correct, then any local power can be taken away, improperly reducing the school boards to rubberstamp status. This conclusion cannot be squared with the First District's previous holding that local school boards cannot be reduced to such a ministerial status. *See Duval*, 998 So. 2d at 644. Which is now the correct statement of the law: the opinion below, or *Bush*, *Duval*, *Brevard*, and *Hillsborough*? The need for this Court's review of this critical issue is clear.

The Schools of Hope provision represents an equally dramatic departure from previous precedent by giving the State the right to set up charter schools without any participation by local school boards. Courts had previously and uniformly rejected such efforts as unconstitutional. *See Bush*, 919 So. 2d at 409-10; *Duval*, 998 So. 2d at 644. *Cf. Palm Beach Cty. v. Fla. Charter Educ. Found., Inc.*, 213 So. 3d 356, 361 (Fla. 4th DCA 2017) (approving the constitutionality of the charter school approval process, but only because "it does not bypass local school boards to independently authorize charter schools").

There is yet another important reason to take this case. The First District held that the School Boards had no standing to challenge the Schools of Hope and other restrictions that focused on operational control rather than financial control. The First District relied on the longstanding principle that public officials cannot refuse to enforce a statute they disagree with. *See State ex rel. Atlantic Coast Line Railway Co. v. State Bd. of Equalizers*, 94 So. 2d 681 (1922). For example, even if a property appraiser does not like that a statutory exemption is preventing the collection of additional revenue, the appraiser has no standing to challenge the constitutionality of a statute that does not interfere with his or her duties. *Dep't of Rev. v. Markham*, 396 So.2d 1120, 1121 (Fla. 1981). This is so because property appraisers do not decide what property is exempt, the Legislature does.

The principle makes sense. Public officials, like everyone else, are bound by Florida's network of statutes and regulations. To allow public officials to choose which statutes they prefer to follow or prefer to challenge would invite chaos.

But the anti-nullification principle established by *Atlantic* and its progeny has never prevented public officials from challenging statutes that directly impact the scope of their constitutional authority. *See Reid v. Kirk*, 257 So. 2d 3, 4 (Fla. 1972) ("[S]tanding is allowed when a public official is willing to perform his duties, but is prevented from doing so by others."); *Coalition for Adequacy & Fairness v. Chiles*, 680 So. 2d 400, 403 n.4 (quoting from *Reid*). Thus, school

boards have previously brought numerous similar challenges without any hint that they were without standing to complain about the Legislature's encroachment on their constitutional authority. *E.g.*, *Coalition*, 680 So. 2d at 403 n.4; *Loxahatchee River Envt'l Control Dist. v. Sch. Bd. of Palm Beach Cty.*, 96 So. 2d 930 (Fla. 4th DCA 1986); *Palm Beach*, 213 So. 3d at 356; *Duval*, 998 So. 2d at 641; *Div. of Admin. Hearings v. Sch. Bd. of Collier Cty.*, 634 So. 2d 1127 (Fla. 1st DCA 1994).

The First District's decision improperly expands *Atlantic* far beyond its anti-nullification beginnings. Indeed, it comes on the heels of a similar First District decision rejecting standing, in which a concurring judge warned that the First District was "approv[ing] the expansion of the public official standing doctrine beyond its historical roots." *Sch. Dist. of Escambia Cty. v. Santa Rosa Dunes Owners Ass'n*, 274 So. 3d 492, 496 (Bilbrey, J., concurring), *petition for discretionary review pending*, SC19-1376.

Judge Bilbrey's concern has now come home to roost. The decision below has ramifications far beyond this case, effectively allowing the Legislature to take away any constitutional power with impunity and without challenge. Every public official, every constitutional officer, is impacted by this ruling. This Court should grant review to return the anti-nullification principle of *Atlantic* to its roots.

CONCLUSION

This Court should grant review and set this case for oral argument.

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